

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

JUN 29 1994

In The Matter Of )  
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Implementation Of Section 19 )  
Of The Cable Television )  
Consumer Protection And )  
Competition Act Of 1992 )  
 )  
Annual Assessment Of The )  
Status Of Competition In The )  
Market For The Delivery Of )  
Video Programming )

CS Docket No. 94-48

COMMENTS OF THE  
NYNEX TELEPHONE COMPANIES

The NYNEX Telephone Companies<sup>1</sup> ("NYNEX") submit these Comments in response to the Commission's Notice of Inquiry ("NOI") released May 19, 1994, in the above-captioned matter.

I. INTRODUCTION AND BACKGROUND

Section 19(g) of the Cable Television Consumer Protection and Competition Act of 1992 requires the Commission to report annually to Congress on the status of competition in the market for the delivery of multichannel video programming. The first report must be submitted to Congress by October 1, 1994.<sup>2</sup> The Commission has initiated the NOI to assist in

1 The NYNEX Telephone Companies are New England Telephone and Telegraph Company and New York Telephone Company.

2 NOI para. 1

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gathering information to comply with this requirement.

NYNEX's Comments address the Commission's request for comments on the extent to which new telephone technologies, such as video dialtone, constitute viable competitive alternatives to cable television service.<sup>3</sup> As we discuss below, video dialtone is not yet a viable competitive alternative to cable service. While video dialtone services to be offered by the LECs offer the potential to provide such competition, realization of that potential requires that the Commission fashion a regulatory regime that will permit the efficient processing of Section 214 video dialtone applications.

## II. VIDEO DIALTONE IS NOT YET A VIABLE COMPETITIVE ALTERNATIVE TO CABLE TELEVISION SERVICE

The Commission suggests that "[c]ompetition to cable television is currently provided to a limited extent by ... telephone technologies (such as video dialtone) ...."<sup>4</sup> The Commission observes that while its 1990 report to Congress did not include local exchange carriers (LECs) in the analysis of multichannel video competition, "[w]ithin the past four years, however, significant changes have occurred which warrant inclusion of LECs in our analysis of competition in the multichannel video marketplace."<sup>5</sup> The Commission seeks

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<sup>3</sup> NOI para. 8.

<sup>4</sup> NOI para. 18.

<sup>5</sup> NOI para. 41.

comment on how it should approach and address video dialtone in its 1994 report to Congress on competition.

There is no doubt that since 1990 significant changes have taken place in the video dialtone marketplace.<sup>6</sup> These changes include the Commission's adoption of its Video Dialtone Order in July 1992;<sup>7</sup> conditional grants by the Commission of Section 214 applications filed by several LECs for technical and market trials of video dialtone; the filing by several LECs of Section 214 applications for video dialtone service; proposed legislation to repeal the telephone company-cable cross-ownership restriction; and several pending court challenges to the constitutionality of that restriction. NYNEX considers the development of a competitive video dialtone service to be in the public interest, and commends the Commission for its support of video dialtone. However, as described below, greater support and timely action by the Commission are needed if video dialtone is to reach its full competitive potential and benefit American consumers.

In the Video Dialtone Order, the Commission declared that modifying its rules to allow local telephone companies to participate in the video marketplace through video dialtone would advance the Commission's "overarching goals of creating opportunities to develop an advanced telecommunications infrastructure, increasing competition in the video

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<sup>6</sup> See NOI paras. 41-43.

<sup>7</sup> Telephone Company-Cable Television Cross-Ownership Rules, 7 FCC Rcd 5781.

marketplace, and enhancing the diversity of video services to the American public."<sup>8</sup> Plainly, the Commission wished to foster effective competitive alternatives to cable television service.<sup>9</sup> The Commission's video dialtone initiative offers hope for an alternative video delivery mechanism: "Video dialtone ... addresses the barriers that hinder the development of a competitive video marketplace and the efficient development of new broadband technologies by the local telephone companies...."<sup>10</sup>

It has been nearly two years since the Commission adopted its Video Dialtone Order. To date, the Commission has permitted five limited video dialtone trials to begin.<sup>11</sup> Over twenty-five applications have been filed by various carriers to provide video dialtone service. All these applications remain pending -- some as long as a year and a

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<sup>8</sup> Video Dialtone Order para. 1; see also id. at paras. 15 and 27.

<sup>9</sup> See Video Dialtone Order paras. 6, 118, 135, 137, n. 104.

<sup>10</sup> Video Dialtone Order n. 104.

<sup>11</sup> Chesapeake and Potomac Tel. Co. of Virginia, WPC-6834; New York Tel. Co., WPC-6836; U S WEST Communications, Inc., WPC-6868; Southern New England Tel. Co., WPC-6858; and Rochester Tel. Co., WPC-6867. According to the Section 214 applications filed by these LECs, the total number of homes passed (for all trials combined) is less than 7500. These trials are largely exploratory in nature, i.e. learning experiences by LECs to assist in developing information and strategies to effectively compete with entrenched cable firms. The competitive analysis data gained in such trials are highly proprietary and confidential, and should be strictly treated as such by the Commission in any subsequent filing request. See NOI para. 45.

half.<sup>12</sup> Further, even if the pending commercial video dialtone applications are approved shortly, it will still be months before actual service may be started because of subsequent rounds of scrutiny, i.e. the tariff filing process. If video dialtone is to become a viable competitive alternative to cable, the Commission must expedite the review and approval process.<sup>13</sup> Until then, specific data gathering on video dialtone as a competitive offering is premature and will not provide meaningful analytical value.<sup>14</sup>

Moreover, video dialtone is still at an early state of development; the technology and functions are variable and evolving.<sup>15</sup> Further, as the Commission points out, the "status of competition provided by video dialtone in the multichannel video marketplace may be affected by matters currently pending before the Commission, the courts and Congress."<sup>16</sup> Accordingly, the competitive viability of video dialtone has yet to be determined.

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12 See Bell Atlantic Section 214 Applications WPC-6838 and WPC-6840, filed November 16, 1992 and December 15, 1992, respectively.

13 As noted in the Video Dialtone Order (n. 295), "the public interest is served by prompt implementation of video dialtone."

14 As acknowledged by the Commission: "Because video dialtone is a nascent service, we believe it premature at this junction to seek specific subscription data." NOI para. 46.

15 The Commission acknowledged this throughout the Video Dialtone Order. See, e.g., id. at para. 13 and n. 104.

16 NOI para. 45. See also id. at para. 44.

Therefore, video dialtone has not yet attained the status of an actual competitive service offering for which specific, useful data can be furnished to the Commission, and, in turn, to the Congress. The Commission's 1994 report to Congress could, however, trace the history of video dialtone to date (as referenced herein and in the NOI), and draw upon data and information already supplied by LECs to the Commission in Section 214 applications and related submissions.<sup>17</sup>

Also, the Commission has already planned a review of video dialtone, including its competitive status, in 1995.<sup>18</sup> Increasing competition in the video marketplace is one of the Commission's public interest goals. If the matters before the Commission, the courts and Congress can be resolved, and the unnecessary barriers to telephone company participation in the video marketplace removed, the data gathered during the Commission's upcoming review of video dialtone should be useful in preparing the second annual report to Congress.

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<sup>17</sup> For example, as ordered by the Commission, New York Telephone is scheduled to file a detailed report on July 14, 1994 relative to its video dialtone trial in New York City. See New York Telephone Company, Grant Of Section 214 Authority To Test Video Dialtone, 8 FCC Rcd 4325 (1993), para. 28.

<sup>18</sup> Video Dialtone Order para. 96.

III. CONCLUSION

With Commission support, video dialtone stands to become a viable competitive alternative to cable television service, and to generate specific data of use to the Commission in future reports to Congress.

Respectfully submitted,  
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